



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LEBANON EDUCATION ASSOCIATION/NEA- NEW HAMPSHIRE	:	
	:	
Complainant	:	CASE NO. T-0240:14
	:	
v.	:	DECISION NO. 88-63
	:	
LEBANON SCHOOL DISTRICT	:	
	:	
Respondent	:	

LEBANON SCHOOL BOARD	:	
	:	
Complainant	:	CASE NO. T-0383
	:	
v.	:	
	:	
LEBANON EDUCATION ASSOCIATION/NEA- NEW HAMPSHIRE	:	
	:	
Respondent	:	

APPEARANCES

Representing Lebanon School Board:

Daniel J. Whitaker, Superintendent

Representing Lebanon Education Association/NEA-NH:

James Allmendinger, Esq., Counsel NEA-NH
Wally B. Cumings, UniServ Director, NEA-NH
Leslye R. Dedopoulos, NEA-NH

Also appearing:

Sarah Root, President LEA
Margaret Sullivan, LEA
Barbara Cunningham, LEA
Cathy Lacombe, LEA
Joseph R. Spinella, LEA

BACKGROUND

Unfair labor practice charge alleging repudiation of the grievance procedure by failure of the School District to abide by the designated committee's decision to reinstate teacher, Joseph Spinella, was filed by the Lebanon Education Association, NEA-NH (LEA). Counter-charges were subsequently filed by the Lebanon School Board (Board) for interference with the public employer's selection of an agent in the settlement of grievances in the Joseph Spinella case.

In summary the LEA's charge was that the Board failed to follow and comply with the grievance procedure in the collective bargaining agreement with respect to the non-renewal of first year teacher Joseph Spinella. The Board countered by stating that certain communications between the LEA and specific members of the Board influenced the decision rendered by the Committee contrary to established practice that only evidence and testimony presented at the hearing would be considered. The Board alleged such communication deprived them of an opportunity for rebuttal.

Hearing was held on July 7, 1988 at the office of the PELRB in Concord, New Hampshire.

Attorney Allmendinger for the Lebanon Education Association in an opening statement made specific reference to prior cases before PELRB.

Superintendent Whitaker agreed with the references made to certain cases, particularly the Pelham case but alleged that the LEA interfered by contacting a Board Member in violation of past practice and the agreed upon ground rules of grievance hearing procedure.

Witness Joseph R. Spinella testified that a grievance was filed on his behalf April 7, 1988 for non-renewal of his contract for the year '88-'89; that the grievance was filed because Superintendent Whitaker had indicated that he was a "good" teacher but the Board wished to retain only "excellent" teachers; that the contract between the LEA and the Lebanon School District did then and does now contain a workable grievance procedure which outlines the steps to be followed, Step 3 of the procedure states:

"the School Board or its designated committee shall meet with the aggrieved party within ten school days to attempt to resolve the matter. The Board shall communicate its decision in writing within ten school days of the meeting."

Testimony revealed that the committee of the Board under the agreed procedure had full authority to act for and on behalf of the Board. Further that Step 3 of the grievance procedure was followed in a timely manner and that the committee of the board, duly appointed in accordance with the agreement, voted to reinstate Mr. Spinella for the '88-'89 school year. Subsequent to this decision an order was signed by Jay Stearns of the School Board indicating that this was the decision of the Board supported by the findings of the designated committee.

Superintendent Whitaker reversed the committee's decision to reinstate Spinella to this position citing as his basic reason the fact that an Officer of the LEA, Cathy Lacombe, telephoned Board Member Linda Spencer Green prior to a decision being made and did discuss matters allegedly relating to the Spinella grievance by inquiring if a replacement had been made for his position, thereby influencing the decision to be rendered by the board's committee. This he stated was a clear violation of a prohibited past practice that no discussion would be made outside of members in attendance at the grievance hearing until a decision was finalized.

Witness Cathy Lacombe stated that the Superintendent indicated that teacher Spinella had definite strengths and was a competent teacher, but that the Board had a right to expect "excellence". This discussion occurred at the original grievance hearing between the grievant and the superintendent. Testimony further indicated that Linda Spencer Green, Chairman of the Grievance Committee and member of the board was contacted on May 26 by Marilyn Mack another member of the grievance committee only to inquire whether a replacement had been hired for Mr. Spinella's position in Grade 5. Testimony did not reveal any further discussion with respect to the content or the conduct of the grievance hearing.

At the June 8th meeting of the Board William Bailey read a motion to deny the grievance committee's decision. Conflicting testimony was offered as to the understanding of the motion and its end desired results. Evidence was presented on the various evaluations made of Mr. Spinella's teaching capabilities and competence reflecting acceptable performance. Reference was made to communications between the Superintendent and Mr. Spinella which purported to be termed a warning or a less than favorable evaluation and a request for the production of the letter of warning was requested but later withdrawn by the chairman. Further testimony was presented by Sarah Root, a teacher in the District and president of LEA and member of the grievance committee, Barbara Cunningham, a Lebanon High School teacher for the past seven years and member of LEA for six years and also a member and chair of the grievance committee and a member of the committee in the Spinella case.

PELRB Member Toomey inquired about the Superintendent's feelings relative to the board's ability to overturn a decision of its committee designated to act for and on behalf of the Board. Reply did not indicate that the board could overturn the designated committee's decision.

Witness Margaret Sullivan, currently employed by the State Department of Education who had a long history in the Lebanon School system stated that it had always been the practice that a decision of the designated committee would be binding on the board. Reference was made to the board's policy with respect to communications under these circumstances however, direct questioning failed to produce any evidence of a written documented policy. If such a policy was in effect it was not readily available to the parties involved. Testimony indicated that the ground rules generally set for a grievance procedure would not be discussed in public or outside of the membership of the grievance committee until the final decision had been completed and issued.

The Board attempted to prove that the contact by a member of the grievance committee to another Board member inquiring whether or not a replacement had been hired for Mr. Spinella's whose contract had been non-renewed constituted an outside communication and an unfair labor practice. The evidence of the telephone inquiry influencing the decision in the grievance was less than persuasive.

FINDINGS OF FACT

After considering all the testimony, evidence and documents, PELRB makes the following findings of fact with respect to the requests of the parties:

1. PELRB concludes that the negotiated grievance procedure contained in the contract between the Lebanon Education Association and Lebanon School Board effective July 1, 1986 to June 30, 1989 specifically contained on page 36 and 37 of the contract was complied with and followed implicitly and that there has been no violation of any ground rules as such which has been adopted and was practiced for grievance procedures.
2. The committee designated by the School Board to act, has in the past and does now, have the authority to make a decision which is binding on the Board. Such decision is not subject to reversal by the Board.

ASSOCIATION'S REQUESTS FOR FINDINGS:

- #1-17 Granted.
- #18 Granted in part.
- #19 Granted.
- #20 See decision.
- #21 Granted.
- #22 Testimony of past practice in prior grievances existed.
- #23 Granted in part. Denied in part.
- #24 Granted.
- #25 Not clear.
- #26-27 Granted.

ORDER

PELRB finds the Lebanon School District guilty of unfair labor practice, violation of RSA 273-A:5, 1 (a), (c), (e), (g), (h) and (i) and hereby ORDERS the reinstatement of teacher Joseph Spinella in accordance with the decision rendered by the designated committee of the School Board, decision as follows:

"On June 2, 1988 the Grievance Committee sustained the LEA's grievance and reinstated the grievant, Joseph Spinella as a teacher for the 1988-89 school year."


EDWARD J. HASELTINE, Chairman

Signed this 19th day of August, 1988.

By unanimous vote. Chairman Edward J. Haseltine presiding. Present and voting members Seymour Osman and Daniel Toomey. Also present, Executive Director, Evelyn C. LeBrun.